



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

File: WAC 98 193 53702 Office: California Service Center Date: AUG 10 2000

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences; specifically, in neuroscience. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a neuroscientist. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). The petitioner claims to have received such an award. The

petitioner submits evidence indicating that he "has been awarded a long-term fellowship by the INTERNATIONAL HUMAN FRONTIER SCIENCE PROGRAM ORGANIZATION." The burden is on the petitioner to establish that this two-year fellowship constitutes one of the highest honors in his profession. The standard for such an award is extremely high; the award must indisputably place the recipient among a very small elite. If the petitioner's fellowship does not carry the international prestige of, for example, the Nobel prize, then it is not sufficient to establish the petitioner's eligibility. Further consideration of this fellowship follows below, with regard to lesser awards.

Barring the alien's receipt of a major international award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

With regard to his above-mentioned fellowship from the Human Frontiers Science Program ("HFSP"), the petitioner states:

The aim of the HFSP is to encourage researchers who are expected to play an important [role] in originating and pursuing creative research, in addition to exhibiting scientific originality and excellence in their field.

(Emphasis in original.) This description is telling; the fellowship is for "researchers who are expected to play an important" role, rather than for those who already have played such a role. The petitioner's temporary fellowship has the earmarks of a training position for a researcher at the outset of his career, rather than a career position for an already-established scientist.

The other awards claimed by the petitioner are, likewise, fellowships which essentially fund low-paying, temporary employment in training-level positions. The petitioner has not shown that only the very top researchers in his field receive grant-funded fellowships.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner is a member of the Society for Neuroscience and the American Association for the Advancement of Science. While the petitioner has documented his membership in these associations, he

has not demonstrated that the associations require outstanding achievements as a condition for admission to membership. If one can become a member simply by working in the field and/or paying regular dues, then membership is essentially open and therefore does not imply or demonstrate extraordinary ability.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

With regard to this criterion, the petitioner states that other researchers have cited his published work in their articles. A given article is not "about" the petitioner simply because the petitioner is one of dozens of researchers named in bibliographical footnotes. Such citations are more properly considered as evidence of the impact of the petitioner's own published work, which falls under its own criterion, below.

Even then, the petitioner has not submitted direct evidence of these claimed citations; instead, the petitioner submits a list which he himself prepared, showing the articles which he claims cite his work. The petitioner lists only the first author of each paper, so it is difficult to determine how many of these papers were written independently of the petitioner's own research group. The list includes several papers written by the petitioner himself. Self-citation of this sort does not demonstrate widespread impact, and it neither requires nor demonstrates extraordinary ability.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner satisfies this criterion, having published eight papers, many in major journals, with additional works in progress or submitted for publication. The petitioner also submits abstracts of conference presentations. At the same time, the Service cannot ignore that publication of one's work is virtually routine in some fields of endeavor.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner cites his entire military and academic record under this criterion. Three letters of reference accompany the petition.

██████████ Ph.D., associate professor at the ██████████

states:

As a graduate student [the petitioner] was involved in research which dealt with the cellular and pharmacological basis of *Epilepsy*, a well known neurological disorder. In these studies he significantly contributed to further understanding of the mechanisms by which neurons in the brain behave during synchronized activity. This study may provide a basis for the understanding of intact and dysfunctional brain control mechanisms. . . .

In my department [the petitioner] has initiated a major research project on intracellular properties of cortical cells *in vivo*. Currently he is involved in a research project dealing with the cellular basis of *Image segmentation*, the grouping of related features in a scene. In these studies [the petitioner] has been contributing vitally to further understanding of the mechanisms by which neurons in the brain process visual information.

Dr. [REDACTED] asserts that the petitioner's research "may" yield significant new knowledge, provided certain unspecified conditions are met, but Dr. [REDACTED] does not demonstrate that the petitioner's work has already had a major impact on his field. Dr. [REDACTED] asserts that "successful continuation of this project will place [the petitioner] among the top researchers in neuroscience in the US and worldwide," implying necessarily that the petitioner is not yet among the top researchers in that field.

Prof. [REDACTED] chairman of the Department of Physiology at the [REDACTED] supervised the petitioner's graduate work at that institution. Prof. [REDACTED] describes the petitioner's research using exactly the same wording which appears in Dr. [REDACTED] letter, above. It is not clear whether the original author of this passage was Prof. [REDACTED] Dr. [REDACTED] or some third party.

The third witness, [REDACTED] Ph.D., an assistant professor at [REDACTED], does not describe the petitioner's work in any detail. Dr. [REDACTED] states that the petitioner "has an extraordinary background and all the skills and tools to become a leading neuroscience researcher." As with Dr. [REDACTED] letter, Dr. [REDACTED] speculative assertion that the petitioner will, eventually, "become a leading neuroscience researcher" does not constitute objective evidence that the petitioner is now a leader in that field, which he must be to qualify for this highly restrictive visa classification.

All of the above witnesses have directly supervised the petitioner's research; the selection of witnesses does not demonstrate that the petitioner and his work are broadly known outside of laboratories and universities where he has actually worked.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner asserts that he meets this criterion through "the salary plus substantial benefits package awarded by the [REDACTED] [REDACTED]" Documentation from [REDACTED] indicates that, as of 1998, the petitioner earned an annual salary of \$32,460. The record offers no evidence as to any additional benefits. The raw number is of negligible value without comparative evidence to show that almost no one in the petitioner's field earns an equal or higher salary. Given that the petitioner occupies a low position in the academic hierarchy, such a finding seems highly unlikely.

The director denied the petition, stating that while the evidence shows that the petitioner is a skilled and dedicated researcher, the record does not demonstrate that the petitioner is nationally or internationally acclaimed as a top researcher in his field.

On appeal, the petitioner asserts that the purpose of the appeal is "[t]o reinforce the evidence, and submit new evidence," but the appeal contains no new evidence. The petitioner's appeal statement is, essentially, a copy of the letter which had earlier accompanied the initial petition. The petitioner does not "reinforce" his claim simply by repeating it.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a neuroscientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent in his field, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.